

APPEAL NO. 020149
FILED MARCH 5, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 10, 2001. With respect to the issue before her, the hearing officer determined that the appellant's (claimant) _____, compensable injury includes the right hand, right wrist, right elbow, and right forearm and does not include the cervical and thoracic spine and depression. The claimant appeals the determination regarding the thoracic and cervical spine and depression, arguing that the hearing officer's decision in that regard is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. In its response, the respondent (carrier) urges affirmance. The carrier did not appeal the determination that the compensable injury includes the right hand, right wrist, right elbow, and right forearm.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. The determination by the hearing officer that the compensable injury includes the right hand, right wrist, right elbow and right forearm has not been appealed. The claimant testified that on _____, he was attending physical therapy for treatment of the compensable injury and as he was seated using a pulley apparatus, a part of the apparatus came loose from the wall and struck him in the back of the head and across his back. The claimant also testified that he is depressed because he is unable to be productive. The claimant acknowledged in his appeal that no doctor has diagnosed a thoracic injury; however, the claimant maintains that the medical evidence establishes a clear link of a cervical injury to the _____, incident and that depression should be considered as part of the compensable injury. In recorded statements, Dr. S and Dr. B maintained that the claimant did not complain that he injured his neck in the _____, incident. Dr. B went on to say that he evaluated the claimant after the incident and he believed that the injury the claimant sustained as a result of the incident was a bump on the head. Dr. S stated that the claimant's subjective complaints were identical to those prior to the incident. Dr. Sc performed a psychosocial evaluation of the claimant and reported that there were relatively few physiological signs of depression.

Extent of injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence and to decide what facts the evidence has established. Garza v. Commercial Ins. Co., 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis,

553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Ins. Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). As an appellate body we will not reverse a factual determination unless the challenged findings are so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We are satisfied the evidence sufficiently supports the hearing officer's determination that the claimant's compensable injury does not extend to and include the thoracic spine, cervical spine, or depression. In addition, our review of the record does not demonstrate that the challenged determination is so against the great weight of the evidence as to compel its reversal on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **FAIRFIELD INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DENISE BLOCKBOURN
12225 GREENVILLE AVENUE
DALLAS, TEXAS 75243.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge